



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 13, 2002

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2002-7150

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#173686.

The City of Fort Worth (the "city") received a request for all records, documents, reports, studies, correspondence, etc. involving the former Bank One building and its owners since March 28, 2000, including any plans to rebuild, reuse, or destroy the building. You claim that the city has allowed the requestor to inspect much of the requested information. However, you claim that the information submitted in Exhibits C, D, D1, and E is excepted from disclosure under sections 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, you argue that Exhibit C is excepted from disclosure under section 552.107(1) of the Government Code. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to its client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). *See also* Open Records Decision No. 676 (2002) (stating that section 552.107(1) excepts from required disclosure a client governmental body's privileged communications as defined by Texas Rule of Evidence 503). You state that the information submitted in Exhibit C consists of communications with the city's attorneys and "was not intended to be disclosed to third person[]" other than those to whom disclosure was made in furtherance of the rendition of

professional legal services to the client or those reasonable [sic] necessary for the transmission of the communication.” Based on your arguments and our review of the submitted information, the city may withhold the information in Exhibit C under section 552.107(1).

Next, we will address your section 552.108 claim for the information submitted as Exhibits D and D1. Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). To claim this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers’ licenses), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Furthermore, generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). You contend that if the procedural information in Exhibits D and D1 is released, a criminal would know how to cause havoc and avoid detection from the police. You also claim that if the information were revealed, the police and fire departments’ operations would be subject to increased interference. Based on your arguments and our review of the police department’s procedural information in Exhibits D and D1, we agree that some of the submitted information, which we have marked, is excepted from disclosure under section 552.108(b)(1). However, as the fire department’s primary function is not to investigate crimes and enforce the criminal laws, the fire department is not a law enforcement agency as contemplated by section 552.108. *But see* Open Records Decision No. 127 (1976) (finding that an arson investigation unit of a fire department is a law enforcement agency for purposes of section 552.108). As such, the records of the fire department are not protected by section 552.108.

Next, we note that portions of the information submitted as Exhibit E include information made public by section 552.022 of the Government Code. This section provides several categories of information that are not excepted from required disclosure unless they “are expressly confidential under other law.” In pertinent part this section reads

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

The submitted materials include information used to estimate the need for or expenditure of public funds. The information used to estimate the need for or expenditure of public funds is made public pursuant to section 552.022(a)(5). The submitted information which is within the ambit of section 552.022 is therefore subject to required public disclosure, except to the extent that any of this information is expressly confidential under other law. You argue that section 552.111 excepts this information from disclosure. However, section 552.111 is a discretionary exception to disclosure and therefore not other law that makes information expressly confidential under section 552.022. *See* Open Records Decision Nos. 586 (1991), 473 (1987). You do not argue, nor are we aware of any other law that would make this information confidential. Therefore, the information that we have marked in Exhibit E must be released to the requestor.

Lastly, we address your claim under section 552.111 of the Government Code for the remainder of the information in Exhibit E. Section 552.111 excepts from disclosure “an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency.” This section encompasses the deliberative process privilege. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000). The deliberative process privilege, as incorporated into the Act by section 552.111, protects from disclosure interagency and intra-agency communications consisting of advice, opinion, or recommendations on policymaking matters of a governmental body. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 615 at 5 (1993). An agency’s policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. Additionally, the deliberative process privilege does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.); Open Records Decision No. 615 at 4-5 (1993).

You indicate that the information in Exhibit E contains deliberations by policymakers for the city regarding the Bank One building. Based on your arguments and our review of the information submitted as Exhibit E, we agree that some of the information consists of interagency and intra-agency communications revealing advice, opinion, and recommendations on the city's policymaking functions. Thus, you may withhold this information, which we have marked, under section 552.111 of the Government Code.

In summary, we have marked the information that must be released pursuant to section 552.022(a)(5). We have also marked the information in Exhibits D and D1 that may be withheld under section 552.108, as well as the information in Exhibit E that may be withheld under section 552.111. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Heather Ross".

Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 173686

Enc: Submitted documents

c: Mr. Dan Malone
1204 West Seventh, Suite 201
Fort Worth, Texas 76102
(w/o enclosures)